respectable individuals. I have given this matter the most anxious consideration but I cannot find a motive for the second defendant in wanting to cause wrongful harm to the plaintiff. The second defendant is a professional person. This is not a case where, out of the blue, an allegation like that was made.

Counsel for the plaintiff suggested this motive. The second defendant had lost the emeralds and would have to account to the shareholders of the first defendant; thus he put the blame on the plaintiff. If that were in fact the motive then it was absolutely low down. But considering the circumstances, I do not think this is likely to be the case. Unless a person has lost his mind, I do not see him putting a blame of this kind on someone with whom the person has 30 years of cordial relationship. There is no suggestion that the second defendant has lost his mind. The first defendant was after all a family company of which the second defendant was the main shareholder. The amount involved was not even large. If this suggested motive were in fact the real reason for making the police report then having done so I would have thought that he would more likely have agreed to submitting the joint petition to the public prosecutor, having already achieved his purpose. To my mind it is clear that a combination of a number of circumstances brought about this unfortunate turn of events and caused a cordial relationship to turn sour.

In the event, I dismiss the claim based on malicious prosecution. As regards the claim based on defamation, there can be no doubt that to accuse a person of having committed the crime of cheating or criminal breach of trust is defamatory. For the present purposes I need only consider the defence of qualified privilege. Counsel for the plaintiff conceded, and quite rightly so, that the police report and the letter of 15 March 1983 were written on an occasion of qualified privilege: *Collins* v *Cooper*.[6] To succeed in the action, the plaintiff must show that the second defendant was actuated by express malice, that is to say by spite or ill-will or some other wrong or improper motive: *Bowles* v *Armstrong*.[7] For the same reasons indicated above, I am satisfied that no malice was shown and therefore, the defence of qualified privilege succeeds.

There remains the question of the counterclaim by the second defendant for the return of the emeralds. Having heard both the plaintiff and the second defendant, I am inclined, on balance, to hold that the second defendant has not proven that the plaintiff had taken away the packet of emeralds which was handed to him for his visual inspection. The second defendant did not see the plaintiff leave his office with the emeralds. The plaintiff said that he had left the emeralds on the table. It is not for me to speculate what could have happened to the packet that was probably left on the table. The burden of proof is on the second defendant to show that the plaintiff had taken the emeralds away and he has not discharged that burden. I accordingly dismiss the counterclaim.

There is one other matter which I ought to allude to before I conclude this judgment. This relates to a telephone call which the son (DW2) of the second defendant made to the plaintiff in Australia in 1987 with the aim of exploring a compromise and bringing this action to an end. The son said that he made the call because the second defendant was then about to undergo a major operation, following the results of some tests. The second defendant knew that the son would be making the call. I do not think anything should reasonably be drawn against the second defendant on that account.

Finally, as regards costs, considering all the circumstances, I think the ends of justice would be met in this case if I should order that each party bear his own costs and I do so order.

Order accordingly.

Solicitors: *Harry Elias & Partners*; *Yap & Yap*.

Reported by *S Surenthiraraj*

Attorney General v Wain & Ors (No 1)

HIGH COURT (SINGAPORE) — ORIGINATING MOTION NO 126 OF 1989
SINNATHURAY J
11 JANUARY 1991

Civil Procedure — Contempt of court — Applicability of English decisions — Applicability of Canadian decisions — Applicability of decisions from other jurisdictions — Applicability of local conditions — Special features of administration of justice in Singapore — Effect and weight of allegations of bias, or a lack of impartiality, propriety or integrity

Civil Procedure — Contempt of court — Meaning of — Types of contempt — Distinction between contempt and permissible criticism

Civil Procedure — Contempt of court — Mens rea — No actual intention necessary — Relevance of intention only to sentence — Defence of innocent dissemination — Defence of fair comment

Constitutional Law — Freedom of expression — Consistency with offence of scandalizing the court — Availability of right for non-citizens

On 30 November 1989, Thean J delivered judgment in a libel action in the case of *Lee Kuan Yew* v *Derek Davies & Ors* [1990] 1 MLJ 390 in favour of the plaintiff. The next day there appeared on p 3 of the 1-2 December issue of the *Asian Wall Street Journal* ('AWSJ'), a news story covering the case and quoting Peter Kahn's, the president of Dow Jones & Co, critical comments on the decision. On 19 December 1989, an application was made by the Attorney General for leave for orders of committal for contempt of court against the present

respondents, that is Barry J Wain ('editor of AWSJ'), Michael J Wilson ('publisher of AWSJ'), Dow Jones Publishing Company (Asia) Inc ('the proprietors/ publishers of AWSJ'), Singapore Newspapers Services Pte Ltd ('the printers') and Changi International Distribution Services Pte Ltd ('the distributors'). The A-G submitted that, based on the statements objected to in the article, a reader would come to the following conclusions: (1) the judiciary in Singapore can be and were influenced in the case because the plaintiff was the Prime Minister; (2) implied that the case was not decided on the merits and attacked the impartiality of the judge, alleging bias; (3) that by alleging that the award of aggravated damages was imposed as a punishment on and was designed to silence honest and independent opinion, the judge had acted on improper motives. Thus the article was in contempt of the High Court generally and Thean J in particular.

The first three respondents, ie the editor, publishers and proprietors, submitted that the article was not contemptuous but merely criticism of the court for the following reasons: (1) the article was not given any particular prominence; (2) the objected statements were buried in the text of the article; (3) the comments were that of a losing litigant and special latitude must be given to disappointed litigants; (4) as AWSJ were permitted to distribute only 400 copies in Singapore, the extent of the distribution was largely limited; (5) in contrast, the court's decision was covered extensively in the local press; (6) the readership of AWSJ were educated and capable of discernment; (7) the statements were made by an individual in USA, and not a politician or person with any following in Singapore; (8) as a daily newspaper, what is written in AWSJ is not 'engraved in stone'; (9) the article was a news article and not an editorial containing considered views. If the article was read merely as a criticism of the courts in Singapore, there was no contempt as the courts, like all public institutions, must accept criticism, as long as it does not pose a serious threat to the administration of justice.

The printers explained the mechanics whereby they printed the AWSJ to show how it was virtually impossible for them to intervene or check for any objectionable statements. The distributors similarly submitted that it was impossible for them to check the contents of the issue.

Held, allowing the application against all five respondents:

(1) The English cases from the beginning of the last decade onwards are not of any assistance as to the law of contempt in Singapore, which is derived from the common law of England, as the English common law has been modified by the Contempt of Court Act 1981 as well as the decisions of the European Court of Human Rights.

(2) Recent Canadian decisions do not apply as they are based on the Canadian Charter of Rights and Freedoms which has no parallel in Singapore.

(3) Cases from other Commonwealth jurisdictions turn on their own facts as the judges in these cases were concerned with social, political, industrial, and other economic conditions prevailing in their respective societies at the particular time.

(4) In determining whether a matter complained of is a contempt of court, it is important that one does not lose sight of local conditions. Unlike in UK, USA and many other Commonwealth jurisdictions, there are no jury trials in Singapore. The administration of justice is wholly in the hands of judges. This condition must be given great weight in considering the application of the law of contempt in Singapore.

(5) The contempt of scandalizing the court by imputing bias, or a lack of impartiality, propriety or integrity in the exercise of judicial functions, strike at the very core of the functions of a judge and are harmful to the public confidence in the administration of justice and must necessarily lower the authority of the court and is clearly a contempt of court.

(6) It is not necessary to prove that a person has the actual intention to interfere with the administration of justice to find he has committed the contempt of scandalizing the court. This is only relevant for sentencing.

(7) The defence of dissemination was not available for the contempt of scandalizing the court.

(8) It is not a requirement of our law that it must be proved beyond a reasonable doubt that the publication constitutes a real risk of prejudicing the administration of justice. It is sufficient to prove that the words complained of have the inherent tendency to interfere with the administration of justice.

(9) There is no defence analogous to the defence of fair comment available.

(10) There is no inconsistency between the right of freedom of speech and the offence of scandalizing the court, nor was it open to suggest that s 8(1) of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) should be read down as subservient to art 14(1) of the Constitution.

(11) The protection of art 14 of the Constitution was not available to the first three respondents, as they are not citizens of Singapore.

(12) The article should be read in the context of a reader on 2 December 1989, when there was saturation coverage of the decision as well as the article and what opinion the reader would have of the High Court of Singapore after reading the article. Any ordinary reader of the article would find it to be contemptuous of the judge and High Court.

(13) The statement that 'A Singapore court has entered a libel judgment in favour of Singapore's Prime Minister based on an article the Prime Minister found personally offensive' contains the imputation that the judge has not been impartial and the strong suggestion that he had been biased.

(14) The statement 'The article at issue contained an essentially accurate portrayal of highly newsworthy events' alleged bias and imputed that the judge found the article libellous merely because the Prime Minister took umbrage to it.

(15) The statement 'Solely because it was read to be critical of Mr Lee, however, it has resulted in this unwarranted determination against the *Review*' is contemptuous as it would lead any ordinary reader to say that the judge had not decided the cases on the facts before him but for considerations that were wholly wrong on his part and imputes bias in favour of the Prime Minister, the plaintiff.

(16) The statement 'We can only hope that in the long term, the *Review*'s punishment will not, as doubtlessly intended, still honest and independent voices in Singapore' was aimed at the judge rather than the Prime Minister as it was the judge who entered the judgment and awarded the damages and clearly imputes improper motives to the judge in the exercise of his judicial function.

(17) The printers and distributors had no knowledge of the existence of the offending article but neither lack of intention nor the defence of innocent dissemination is available to them if what is printed is in fact a contempt of court.

Cases referred to

1 *Lee Kuan Yew* v *Derek Gwyn Davies & Ors* [1990] 1 MLJ 390 (refd)
2 *A-G* v *Fred Zimmerman & Ors* [1986] 2 MLJ 89 (refd)
3 *A-G* v *Wong Hong Toy* [1983] 1 MLJ 370 (refd)
4 *The Sunday Times* v *United Kingdom* [1979] 2 EHRR 245 (refd)
5 *Badry* v *Director of Public Prosecutions of Mauritius* [1983] 2 AC 297; [1982] 3 All ER 973 (refd)
6 *R* v *Kopyto* 39 CCC 1 (distd)
7 *McLeod* v *St Aubyn* [1989] AC 549 (folld)
8 *R* v *Gray* [1900] 2 QB 36 (folld)
9 *Andre Ambard* v *A-G of Trinidad & Tobago* [1936] 1 All ER 704 (folld)
10 *Jones, ex parte* (1806) 13 Ves June 237; 33 ER 283 (refd)
11 *Roach* v *Garvan (or Hall)* (1742) 2 Atk 469; 26 ER 683 (refd)
12 *R* v *Odhams Press Ltd & Ors* [1957] 1 QB 73 (refd)
13 *R* v *Griffiths & Ors* [1957] 1 QB 192 (folld)
14 *A-G* v *Pang Cheng Lian & Ors* [1975] 1 MLJ 69 (folld)
15 *R* v *Dunbabin, ex p Williams* (1935) 53 CLR 434 (refd)
16 *A-G for New South Wales* v *Mundey* [1972] 2 NSWLR 887 (refd)

Legislation referred to

Constitution of the Republic of Singapore art 14(1)(a)
Rules of the Supreme Court 1970 O 52
Supreme Court of Judicature Act (Cap 322, 1985 Ed) s 8(1)

Tan Boon Teik (Attorney General) in person (*Sowaran Singh* and *Yap Huan Lan* with him).

Geoffrey Robertson QC (*Lalita Seenivasan* with him) for the first, second and third respondents.

K Shanmugam for the fourth respondent.

Palakrishnan (*Amarjit Singh* with him) for the fifth respondents.

Cur Adv Vult

Sinnathuray J: On Thursday, 30 November 1989, Justice LP Thean delivered judgment in a libel action, in the case of *Lee Kuan Yew* v *Derek Gwyn Davies & Ors*[1] in favour of the plaintiff and awarded aggravated damages against the defendants in the sum of $230,000 and costs. On Friday, there appeared on p 3 of the 1-2 December issue of the *Asian Wall Street Journal* ('AWSJ') the following news story ('the article'):

> Singapore Prime Minister, Lee Kuan Yew, has won a libel suit against the *Far Eastern Economic Review*.
>
> In a lengthy judgment delivered Thursday, the Singapore High Court awarded Mr Lee S$230,000 (US$117,888) in damages, plus costs over an article in the 17 December 1987 issue of the Hong Kong-based weekly magazine. The court said the article defamed Mr Lee and tended to bring him 'into public odium and contempt and lower him in the estimation of the right-thinking people of Singapore'.
>
> In awarding Mr Lee what it called 'aggravated damages', the court cited as a factor, the conduct of defense lawyer Geoffrey Robertson, a prominent Queen's Counsel from London. The court said Mr Robertson repeatedly attempted to cross-examine Mr Lee on irrelevant issues and put 'offensive' questions to him designed to hurt Mr Lee's feelings.
>
> In New York, Peter Kann, president of Dow Jones & Co, owner of the *Review*, said: 'A Singapore court has entered a libel judgment in favour of Singapore's Prime Minister based on an article the Prime Minister found personally offensive. The article at issue contained an essentially accurate portrayal of highly newsworthy events relating to the detention without trial of Catholic social workers by the Lee government, and relations between the Catholic Church and Mr Lee. Solely because it was read to be critical of Mr Lee, however, it has resulted in this unwarranted determination against the *Review*. We can only hope that in the long term, the *Review*'s punishment will not, as doubtlessly intended, still honest and independent voices in Singapore.'
>
> 'Mr Lee has insisted that members of foreign press are in no position to judge the actions of the government of Singapore. It is nonetheless indisputable that no people is free so long as its rulers forbid criticism and its press can report only that which the government finds acceptable.'
>
> 'Counsel for the *Review* will study the judgment to determine what further legal action will be appropriate.'
>
> Dow Jones also is the majority owner of *The Asian Wall Street Journal*.
>
> Mr Lee had sued the magazine's publisher, Review Publishing Co; the editor of the time, Derek Davies; the author of the article, Michael Malik; and the Singapore company that then printed part of the *Review*'s circulation, Times Printers Pte Ltd.
>
> The article quoted statements by a former Roman Catholic priest about the arrest under the Internal Security Act of 16 young Singaporean professionals, four of whom worked full time and six part time for the Catholic church.
>
> The trial was held from 25 September until 14 October. In his judgment, High Court Justice LP Thean ruled that words in the article 'impute dishonorable and discreditable conduct and motive on the part' of Mr Lee. 'They impute an attack on the Catholic church and a dishonorable and improper use by him of the powers under the Internal Security Act.', he said.

On 19 December 1989, an application was made by the A-G for leave to move the High Court for orders of committal against the five named respondents:

First:	Barry J Wain — the editor
Second:	Michael J Wilson — the publisher
Third:	Dow Jones Publishing Company (Asia) Inc — the proprietors/publishers
Fourth:	Singapore Newspapers Services Pte Ltd — the printers
Fifth:	Changi International Distribution Services Pte Ltd — the distributors

The grounds on which leave was granted were that the five respondents had brought into existence by publishing, printing and distributing the article in 1-2 December 1989 issue of the AWSJ which scandalized the High Court in Singapore, in particular Justice LP Thean ('the judge'), by imputations of bias, lack of integrity and impartiality in that he decided the case in favour of the plaintiff because he was the Prime Minister. It was alleged that the other offending matters in the article were the statements that the news account in the *Review* were 'essentially accurate' but 'solely' because it was

read to be critical of Mr Lee it had resulted in an 'unwarranted determination' against the *Review*. And, that aggravated damages were given against the *Review* by way of punishment to facilitate the suppression of honest and independent opinion in Singapore.

Case for the applicant

At the hearing of the application, the A-G submitted that any ordinary person reading the objectionable statements in para 4 of the article in the AWSJ would come to the following conclusions.

(1) The judiciary in Singapore can be influenced, and that in fact it had been influenced in the libel case because the plaintiff was the Prime Minister.
(2) In stating that the 'Singapore court' gave 'judgment in favour of Singapore's Prime Minister, based on an article the Prime Minister found personally offensive', the implication was that the judge had not decided the case on the merits; it was an attack on the impartiality of the judge.
(3) This was emphasized in the next sentence: 'The article at issue contained an essentially accurate portrayal of highly newsworthy events ...' meant that, notwithstanding that the facts were 'essentially accurate', the judge had found the *Review*'s article defamatory. It imputed, once again, that he was biased.
(4) These imputations were driven home to the readers in the sentence that followed: 'Solely because it was read to be critical of Mr Lee, however, it has resulted in this unwarranted determination against the *Review*.' The use of the word 'solely' read with 'unwarranted' was contemptuous of the judge.
(5) Finally, by the last sentence in the paragraph, 'We can only hope that in the long term, the *Review*'s punishment will not, as doubtlessly intended, still honest and independent voices in Singapore', it was said that the judge in awarding the aggravated damages to the plaintiff had punished the *Review*, and that the punishment imposed by him was without doubt intended to silence honest and independent opinion in Singapore. The imputation here is that the judge had acted on improper motives in awarding damages.

The submission was that viewed as a whole, the article was in contempt of the High Court generally, and Justice LP Thean in particular, on three grounds. One, it alleged bias on the part of the judge who had given judgment against the *Review*, two, it imputed that as the trial judge, he had not been impartial in that he had not decided the case on its merits; and three, that he had acted improperly in awarding aggravated damages to the plaintiff in order to further the intention of the executive government to suppress honest, independent opinions in Singapore. The A-G said that it was impossible to attribute any other meaning to those statements in the article. He also questioned as to why it was necessary to state further down in the article, 'counsel for the *Review* will study the judgment to determine what further legal action will be appropriate', when the only available next step for the *Review* was to appeal to the Court of Appeal against the decision of the High Court, and this could have been simply said in so many words.

The crux of the case, said the A-G, is the effect of the article on the public mind. The question to be decided in this application is what effect the article had on the mind of the ordinary reader and not what the writer intended the effect of the article to be. He said that there was no doubt that the article would lead persons to believe that when the Prime Minister is a party to an action, the judge or the courts in Singapore would decide in his favour regardless of the merits of the case. The imputations and allegations in the article were clearly calculated to undermine public confidence in our judiciary and to lower its authority. He said that the sole reason why he had brought these proceedings was because of the unwarranted attack in the article on the integrity and impartiality of the judiciary in Singapore which would adversely affect the proper administration of justice. He emphasized that the application was not made to still honest criticism of our courts. He concluded that the article was clearly a contempt punishable under s 8(1) of the Supreme Court of Judicature Act (Cap 322, 1985 Ed).

Case for the first three respondents

Mr Robertson QC, for the first three respondents, divided the article into two parts: (a) the report of the decision in the libel action, and (b) the reaction to the decision by the president of Dow Jones, the third respondents. The latter was published because the comments were newsworthy items on a matter of considerable public interest in this region.

Broadly, the submission was that if an ordinary reader reads the article merely as a criticism of the courts in Singapore, there is no contempt of court because courts, like other public institutions, must accept criticism, provided that the criticism does not pose a serious threat to the administration of justice. Secondly, it was contended that the article cannot conceivably be read as an attack on the probity of the judge as the alleged objectionable statements of the president of Dow Jones said no more than that he had come to a wrong decision. Counsel said that the president of Dow Jones was entitled to take that view, and what he said was newsworthy for the first respondent to have it reported. In short, the first three respondents denied liability. They maintained that the article did not contain matters that were in contempt of court.

On the article itself, counsel made the following observations:

(1) The article was published on p 3 of the AWSJ without any particular prominence.
(2) The statements complained of were buried in the text of the article.
(3) The comments were those of a losing party and special latitude must be given to statements made by 'disappointed litigants'.
(4) This court's jurisdiction to punish for contempt of court being strictly territorial and the AWSJ having been gazetted and permitted to circulate only 400 copies in Singapore, the extent of the distribution is largely limited.
(5) On the day the article was published as a small news report in 400 copies of the AWSJ, there was saturation coverage of the judge's judgment in the local press.
(6) The readership profile of the AWSJ consists of college graduates who occupy managerial positions; they were a small sophisticated group of people capable of discernment and were not the general public.
(7) The statements complained of were made by an individual in USA, who though head of an international publishing corporation, was not a politician or any other kind of leader with any following in Singapore.
(8) The AWSJ being a daily newspaper, what it writes is not engraved in stone.
(9) Lastly, one must distinguish this case from *Zimmerman*'s case;[2] as this was a news article and not an editorial, the comments were not the considered views of the AWSJ.

Counsel then turned to the affidavit of the first respondent, Mr Barry John Wain, the editor of the AWSJ who lives in Hong Kong. He is a journalist with 27 years of experience of which 18 have been in Asia. He joined the AWSJ when it was launched in 1976. He is an Australian citizen.

In his affidavit, Mr Wain said that he has overall responsibility for all news items that appear in the AWSJ. He is not subject to direction from Dow Jones or from any outside body in deciding which news stories to write or publish or in respect of the contents of the news stories.

Mr Wain gave an account of how the article was produced. He said that when he received news of the judgment delivered by the judge, on the afternoon of Thursday, 30 November 1989, he decided that it was a newsworthy event which deserved coverage in the AWSJ. He immediately directed journalists on his staff to gather such information as was available in Hong Kong and to inquire from the officers in Dow Jones in New York as to whether any press statement would be issued. That same evening he initiated the writing of the article which was put together by several members of the staff, hence it was bylined as having been written 'By a staff reporter'.

In para 9, Mr Wain said that in accepting responsibility for publishing the article neither he nor the staff of the AWSJ had 'any intention whatsoever to prejudice the administration of justice in Singapore or to 'scandalize' Justice LP Thean or other Singapore judges. Nor were we aware that the article would or could have this consequence, or might be held criminally unlawful for any other reason.'

In the remaining paragraphs of the affidavit, Mr Wain dealt not with the facts but with arguments as to why he considered the article did not contain matters that were in contempt of court. As they were covered by Mr Robertson in his submissions, there is no need for me to set them out here.

The second and third respondents did not file any affidavit to explain their respective positions, nor were there any affidavits filed on their behalf in these proceedings. Mr Robertson, however, submitted for them that they too were not liable for contempt of court.

The case for the first three respondents can be summarized in this way.

First, as regards the first respondent it was stated that he was not the originator of the statements complained of. Since it was plainly identified in the article that the comments came from the losing side, the first respondent had no responsibility whatsoever and cannot be made liable for what was said by the president of Dow Jones.

Secondly, on the article itself, that it did not constitute a contempt of court. The sentence 'Solely because it was read to be critical of Mr Lee, however, it has resulted in this unwarranted determination against the *Review*', was correct because if the Review's article had not been critical of Mr Lee the decision would not have gone against the *Review*. As for the word 'unwarranted', it meant 'unjustified' or 'wrong', and therefore, to say that a judgment was 'unwarranted' was not a contempt of court. However, Mr Robertson did say that the words in this sentence could have been better chosen and the language in it was somewhat loose.

Thirdly, on the last sentence in para 4 of the article, 'We can only hope that in the long term, the *Review*'s punishment will not, as doubtlessly intended, still honest and independent voices in Singapore' the position taken was that it was aimed more at the plaintiff in the libel action and his intentions in bringing the action against the *Review* and not at the judges in Singapore because the judges are not mentioned at all in the

article. Alternatively, it was put that even if readers would understand the sentence to refer to the judge, there was no contempt because it did not suggest that he was corrupt or bias. What it did suggest was that the judge had taken into account matters which he should not have in awarding aggravated damages to the plaintiff in the libel action.

The case for the fourth respondents

The fourth respondents, Singapore Newspaper Services Pte Ltd ('SNS') a wholly-owned subsidiary of Singapore Press Holdings Ltd, had a written agreement with the third respondents, Dow Jones, to print the AWSJ in Singapore.

In his affidavit, Mr Chew Keng Juea, a director and group general manager of SNS, explained that the preparations for the printing of the particular issue of the AWSJ would have commenced at about 2am on the morning of 2 December when Dow Jones began transmitting to SNS by facsimile via satellite the film negative of each page of that issue of the AWSJ. As the negatives arrived, they were processed and printed onto printing plates which were then installed on the printing presses. The last negative was received at 6.59am and the last printing plate was ready by 7.02am. Printing began at 7.06am and in less than half-an-hour, by 7.32am, the print order of 12,650 copies was completed. Within five to ten minutes thereafter the distributors would have taken delivery of that day's issue of the AWSJ for distribution. In these circumstances, the deponent said, it was virtually impossible for SNS to intervene or check for any objectionable matter before proceeding to print. He added that the practice adopted by SNS is in accordance with the international printing practice.

Another point made by Mr Chew in his affidavit was that because of the constraints, SNS was careful 'to limit the unwitting involvement' in the publication of any offending article by printing only publications of international repute, such as the AWSJ. Even then, SNS under its agreement with Dow Jones, has a provision to protect itself, and in this regard, cl 12 of the agreement provides as follows:

> Illegal and Actionable Matters:
>
> (A) The customer warrants that nothing whatsoever shall be included in the matter to be printed which may render the printer liable to prosecution or which may otherwise be actionable at the suit of any third party, and the customer shall indemnify the printer in respect of all costs, damages, penalties or other charges whatsoever which may be paid or incurred by the printer as a consequence of proceedings or threatened proceedings arising from the publication of any matter published, whether or not in breach of this warranty.
>
> (B) In the event of a claim being made against the printer for which the customer may ultimately be liable under the terms hereof, notice in writing shall be given to the customer and consultations shall take place before any expense is incurred or the claim settled, defended or otherwise disposed of.

Mr Chew was therefore able to affirm in his last paragraph that :

> SNS has, under its agreement with Dow Jones, consulted with Dow Jones on the present proceedings. SNS understands that Dow Jones takes the view that the article in question is not contemptuous of this honourable court. Likewise SNS will be humbly submitting to this honourable court that it is not liable in respect of the article in question. I wish however, to say, without qualification, that SNS had and has no intention of scandalizing this honourable court or undermining the court's authority and integrity. If, contrary to what will be submitted to this honourable court, SNS is held to have committed a contempt, then, on behalf of SNS, I offer to the court the unreserved and unqualified apology of SNS.

At the hearing, Mr Shanmugam, who appeared for SNS, associated himself with the legal arguments advanced by Mr Robertson, as to why SNS were also not liable for contempt. He urged upon me to review the law relating to innocent dissemination of contemptuous matters by printers and distributors which he argued in his written submission, was not settled law.

The case for the fifth respondents

The fifth respondents, Changi International Distribution Services Pte Ltd ('CIDS'), owned jointly by Changi International Airport Service Pte Ltd and Times Printers Pte Ltd, are engaged in the business of distributing local and foreign newspapers, books and magazines. Under a distribution agreement with Dow Jones, CIDS collect every morning between 7.15am to 7.45am (except Sundays and public holidays) approximately 13,000 printed copies of the AWSJ from the premises of SNS. The copies are received in bundled form according to their destinations. Until February 1987, when the AWSJ was declared a gazetted publication, some 5,000 copies of the AWSJ were distributed in Singapore. Now its circulation is restricted to 400 copies. Of the 13,000 copies, about 1,500 copies are delivered to international airlines in Singapore for inflight reading material, about 100 copies are sent across to Johore Baru and the rest of the copies are despatched to overseas news agents in various Asian countries and Australian cities, either airfreighted or by courier service.

As regards this particular issue of the AWSJ, Mr U Nadarajah, the general manager/executive director of CIDS, has in his affidavit itemized how 12,650 copies were distributed on the morning of 2 December 1989. The 400 copies for distribution in Singapore were each marked with a serially numbered sticker (provided by the Ministry of Communications and Information) with the words 'Approved for Distribution' printed on it. The sticker is then perforated by a security perforator

supplied by the ministry before the 400 copies are released for local distribution. Of the 400 copies, 142 copies are sent to subscribers which include organizations and institutions like libraries, schools, colleges, universities and embassies, including government departments and statutory boards to which distribution is made mandatory by the ministry. The remaining 258 copies were delivered by about 10am to various retailers and news-stands for sale to the public.

On these facts, Mr Palakrishnan, for CIDS, submitted that like SNS, CIDS could have no knowledge of what is in an issue of the AWSJ. He said that it is well-nigh impossible for them to check the contents of any issue to ensure that no contemptuous material is published in it. Thus, on the particular issue of the AWSJ, CIDS did not know that it contained the offending article, and therefore, there was no intention to commit contempt of court.

Counsel said that CIDS raised this defence because under their agreement with Dow Jones, as in the case of SNS, they perforce have to follow the stand taken by Dow Jones who have denied liability. However, in their affidavit and through their counsel, CIDS have said that, if contrary to their submissions, the court finds them liable for contempt, they give their unreserved and profound apologies to the court.

The law

(a) General: Much of the time at the hearing was spent considering the law relating to contempt of court and, in particular, of the kind of contempt applicable to the present case, the contempt of scandalizing the court. It is a subject I am quite familiar with: see *A-G* v *Wong Hong Toy*[3] where liability for scandalizing the court was denied; and *A-G* v *Fred Zimmerman & Ors*[2] in which the then editor and the present proprietors/publishers of the AWSJ had admitted liability. However, in these proceedings, counsel for the parties took me through a number of reported cases in England and other Commonwealth countries in an effort to persuade me to review this branch of the law. As all the five respondents have denied liability, I shall now deal with the subject.

I have gone through the cases that were referred to me at the hearing, though most of them had been cited to me in the two previous cases. Let me now clear the decks with the following views I have come to on a number of them. Concerning the English cases, those from the beginning of the last decade onwards are, in my view, of no guidance to me on the law of contempt applicable in Singapore. This is because our law of contempt of court is derived from the common law of England before major changes were affected to this law by statute in England. The change was made, following on the recommendations of the Phillimore Report, by the enactment of the Contempt of Court Act 1981 which, in codifying the law, has changed the common law. Another change is that the United Kingdom is now bound by the decisions of the European Court of Human Rights: see *The Sunday Times* v *United Kingdom*.[4] These changes have materially affected the application of the law of contempt of court in the administration of justice in England. This fact is noted by Lord Hailsham LC in *Badry* v *Director of Public Prosecutions of Mauritius*[5] at p 303 where in dealing with the contempt of scandalizing the court, he said: 'In the United Kingdom the latter class must now be considered as modified in a liberal direction by the Contempt Court Act 1981.'

A similar situation prevails in Canada. The recent decisions there, like *R* v *Kopyto*,[6] are not useful authorities in Singapore for they are decisions based on the Canadian Charter of Rights and Freedoms which has no parallel in Singapore.

Even as regards the cases from the other Commonwealth jurisdictions, though they make interesting reading, I find that so many of them turn on their own facts. As is to be expected, the judges in making their decisions in those cases were concerned with the social, political, industrial and other economic conditions prevailing in their respective societies at the particular time. It is therefore difficult to reconcile or to rationalize the many different and conflicting views expressed by the judges in their decision-making process. At best the cases only serve as illustrations of the application of the law of contempt in those countries.

What does, however, come out clearly in these cases is that, in determining whether a matter complained of is a contempt of court, it is important that one does 'not lose sight of local conditions': see the Privy Council's decision in *McLeod* v *St Aubyn*.[7] This was recently reiterated in *Badry*'s case[5] where Lord Hailsham LC, said in the Privy Council, in an appeal from Mauritius, that regard must be had to 'knowledge of the conditions local to Mauritius ...'

To my mind, the conditions local to Singapore are many and varied. I am not going to touch on the socio-political and economic conditions of our island nation which is markedly different from many other countries. For the present purpose, what I want to stress is that in so far as the judiciary is concerned, unlike in the United Kingdom and the United States, and a number of other Commonwealth countries where there are jury trials, and the jury are the judges of facts, the administration of justice in Singapore is wholly in the hands of judges and other judicial officers. So, this condition must weigh heavily in the application of the law of contempt in Singapore. Here, I am not referring to that kind of contempt of court concerning conduct liable to interfere with the administration of justice in pending pro-

ceedings as, because of their training and years of experience in the practice of their profession, the judges can be trusted to exclude from their minds extraneous matters in making their decisions. But, because judges in Singapore are judges of facts, the contempt of scandalizing the court by imputing bias to a judge, or attacking his impartiality, his propriety and integrity in the exercise of his judicial functions, must be firmly dealt with. This is for the reason that such imputations and allegations strike at the very core of the functions of a judge. Such accusations are harmful to public interest and are clearly calculated to undermine public confidence in the administration of justice and must necessarily lower the authority of the courts.

(b) Contempt of court: The common law misdemeanour of contempt of court is recognized in countries that inherited the common law of England. The offence is given statutory effect in Singapore by s 8(1) of the Supreme Court of Jidicature Act (Cap 322, 1985 Ed) which provides:

> The High Court, the Court of Appeal and the Court of Criminal Appeal shall have power to punish for contempt of court.

Order 52 of the Rules of the Supreme Court 1970 contains the procedural rules which give effect to this statutory provision.

There are different kinds of contempt of court. Whatever the origins of this law may have been, which Mr Robertson dwelt on at some length, the classical statement of the law which is now part of our law is to be found in the words of Lord Russell CJ, in *R* v *Gray*[8] at p 40.

> Any act done or writing published calculated to bring a court or a judge of the court into contempt, or to lower his authority, is a contempt of court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the courts is a contempt of court.
>
> The former class belongs to the category which Lord Hardwicke LC characterized as 'scandalizing a court or a judge' (*In re Read and Huggonson* (1742) 2 Atk 469; 26 ER 683). That description of that class of contempt is to be taken subject to one and an important qualification. Judges and courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or public good, no court could or would treat that as a contempt of court. The law ought not to be astute in such cases to criticize adversely what under such circumstances and with such an object is published; but it is to be remembered that in this matter the liberty of the press is no greater and no less than the liberty of every subject of the Queen.

On the qualification of the right of public criticism, there is the famous passage in Lord Atkin's judgment in the Privy Council case of *Andre Ambard* v *A-G of Trinidad & Tobago*[9] at p 709, where a clear line is drawn between what is permissible criticism on the one side and abuse or allegation of partiality on the other.

> But whether the authority and position of an individual judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticizing in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.

There remains for me to add, on this law generally, that quite recently in *Badry*'s case[5] the Lord Chancellor, Lord Hailsham, observed that 'nothing has happened in the intervening 80 years to invalidate the analysis' of the law of contempt of court by Lord Russell CJ in *Gray*'s case.[8] In *Badry*'s case[5] the Privy Council held that the allegation of bias levelled against the Supreme Court of Mauritius was a grave and unwarranted accusation which constituted contempt of court because it was clearly meant to shake public confidence in the administration of justice in that country. Again, on bias, the authors of Borrie and Lowe's *Law of Contempt* (2nd Ed) at p 238 have summarized the matter thus: 'The courts are particularly sensitive to allegations of partiality, it being a basic function of a judge to make an impartial judgment.'

(c) Intention: It is right to say that in recent years there is a distinct shift of opinion in Canada and in England on the question of intention in contempt of court cases. However, from the reported cases in the Commonwealth jurisdictions and the opinions of textbook writers, the balance of authority is that it is not necessary to have an actual intention to commit the contempt of scandalizing the court. The intention of the writer of the article complained of is irrelevant in contempt proceedings. I support this view because in English common law, mens rea is not an element that has to be proved to establish contempt and s 8(1) of the Supreme Court of Judicature Act, has incorporated that. So, when a person alleges bias against a judge, it is not necessary to prove that he intended to interfere with the administration of justice. What the court must do is to consider the effect the article complained of has, or is calculated to have, on the mind of the reader. The intention, however, is relevant to the penalty to be imposed.

(d) Innocent dissemination: Connected to the subject of intention is the topic of knowledge in contempt cases. SNS and CIDS, the printers and distributors in these

proceedings, have raised the defence of innocent dissemination. It is opportune now to look at some of the cases on this subject.

The earliest reported case in England concerning printers was *Jones, ex parte*[10] at pp 283-284. In this case there was an alleged contempt by the committee of a lunatic, his wife and other persons as the authors, printers and publishers of a pamphlet. The case was heard by the Lord Chancellor Lord Erskine, who had this to say concerning printers:

> As to the printers, as Lord Hardwicke observes, it is no excuse that the printer was ignorant of the contents. Their intention may have been innocent: but, as Lord Mansfield has said, the fact, whence the illegal motive is inferred, must be traversed; and the party, admitting the act, cannot deny the motive. The maxim '*Actus non facit reum, nisi mens sit rea*', cannot be made applicable in this subject in the ordinary administration of justice; as the effect would be, that the ends of justice would be defeated by contrivance.

The next reported case involving publishers and printers was *The St James' Evening Post* case: *Roach* v *Garvan (or Hall)*[11] at pp 683-685. This was not a case of scandalizing the court but a contempt relating to the administration of justice on a pending cause of action. However, what is of interest and relevant to the present case is that the Lord Chancellor, Lord Hardwicke, in delivering his judgment said in his opening words:

> Nothing is more incumbent upon courts of justice than to preserve their proceedings from being misrepresented ...

This, to my mind, is clearly a proposition that applies to matters said not just in pending cause of action, but also to a cause that has already concluded in the courts. Lord Hardwicke went on to say:

> There are three different sorts of contempt.
>
> One kind of contempt is, scandalizing the court itself.
>
> There may be likewise a contempt of this court, in abusing parties who are concerned in causes here.
>
> There may be also a contempt of this court, in prejudicing mankind against persons before the cause is heard.

And as regards the publisher and printer, he said:

> With regard to Mrs Read, the publisher of the *St James's Evening Post*, by way of alleviation, it is said, that she did not know the nature of the paper; and that printing papers and pamphlets, is a trade, and what she gets her livelihood by.
>
> But though it is true, this is a trade, yet they must take care to do it with prudence and caution; for if they print any thing that is libellous, it is no excuse, to say, that the printer had no knowledge of the contents, and was entirely ignorant of its being libellous; and so is the rule at law, and I will always adhere to the strict rules of law in these cases.
>
> Therefore Mrs Read must be committed to the Fleet, according to the common order of the court upon contempts.

In more recent times, these two cases were reviewed by Lord Goddard CJ in *R* v *Odhams Press Ltd & Ors*[12] at pp 79-80 and referred to by him again in *R* v *Griffith & Ors*[13] at p 204. In *Odham*'s case,[12] he said:

> These cases clearly show that lack of intention or knowledge is no excuse, though it may have a great bearing on the punishment which the court will inflict and, in our opinion, they dispose of the argument that mens rea must be present to constitute a contempt of which the court will take cognizance and punish.
>
> The test is whether the matter complained of is calculated to interfere with the course of justice, not whether the authors and printers intended that result, just as it is no defence for the person responsible for the publication of a libel to plead that he did not know that the matter was defamatory and had no intention to defame.

In *Griffith*'s case,[13] which concerned the foreign weekly magazine *Newsweek*, Lord Goddard said that in contempt of court cases 'those who in the way of their trade are responsible for putting the offending matters into circulation the defence of innocent dissemination is not available ...'

Before me, it was submitted by counsel for the respondents that the case before Lord Goddard CJ concerned contempts calculated to interfere with the course of justice in pending proceedings. This is true. But, I cannot agree that what was said in these cases must be limited to apply to that class of contempt. As I read the cases, Lord Goddard CJ was applying the general law of contempt of court to the particular class of contempt because he had earlier referred to the two cases I have mentioned which had dealt with the law generally. Moreover, nowhere in the judgments has the learned Lord Chief Justice even hinted that what he had said had no application to the other kinds of contempt, that is to say, that intention had to be proved or that the defence of innocent dissemination was available for the contempt of scandalizing the court.

(c) The law in Singapore: On the legal submissions made in this case, having carefully considered the law of contempt of court, I am of the view that since the case of *A-G* v *Pang Cheng Lian*,[14] it is settled law that any publication which alleges bias, lack of impartiality, impropriety or any wrongdoing concerning a judge in the exercise of his judicial function which has terminated is a contempt of court.

Next, it is not a requirement in our law, as was submitted by Mr Robertson, that in contempt proceedings it must be proved that the publication constitutes a real risk of prejudicing the administration of justice. In my judgment, it is sufficient to prove that the words complained of have the inherent tendency to interfere with the administration of justice. But, of course, this must be proved beyond a reasonable doubt.

As regards the defences available to a contemnor, I have already dealt with intention, mens rea, and the defence of innocent dissemination. Here, I want to refer to some other submissions made by Mr Robertson for the first three respondents.

There was a submission on the freedom of expression. I recognize that this court has duty to uphold the right to freedom of speech and expression, and I accept that this right must be balanced against the needs of the administration of justice, one of which is to protect the integrity of the courts. But, I do not accept the submission for the respondents that the latter should prevail only in cases where the criticism is dishonest or false, and where the circumstances in which it is made create a real and present danger to the administration of justice. In my judgment, as has been said in different words many times, criticism of the courts will constitute scandalizing the court where it is scurrilous abuse or when it 'excites misgivings as to the integrity, propriety and impartiality brought to the exercise of the judicial office': see *R* v *Dunbabin, ex p Williams*[15] at p 442, and referred to in *A-G for New South Wales* v *Mundey*[16] at p 910. In this context the defence of fair comment analogous to the defence in the law of defamation which was raised for the respondents is not a defence available to them in contempt of court proceedings.

The other is an argument raised on the constitution. It was argued that the common law offence of scandalizing the court is inconsistent with the written constitutional guarantee of freedom of expression, a conclusion recently reached by the courts of Canada, and long accepted by the United States Supreme Court. Counsel relied on the Canadian case of *Kopyto*,[6] on which I have already said that it does not assist me. A general observation on this argument that I would make is that though in England, by convention, freedom of speech and expression has been guaranteed for centuries, yet the offence of scandalizing the court is as old as the common law.

As for art 14(1)(a) of our Constitution which provides that:

> every citizen of Singapore has the right to freedom of speech and expression;

I cannot see how the first three respondents can rely on it because they simply do not qualify to claim that right in Singapore. In any event, the short answer to the argument is to be found in art 14(2) of the Constitution, the relevant part of which is:

> (2) Parliament may by law impose —
> (a) on the rights conferred by clause (1)(a) ... restrictions ... to provide against contempt of court ...

Inasmuch as Parliament has the power, it has provided in s 8(1) of the Supreme Court of Judicature Act that 'The High Court, the Court of Appeal and the Court of Criminal Appeal shall have power to punish for contempt of court'. Here, the argument was that art 162 would apply to require that the common law offence of scandalizing the court should be read down so that it conforms with the right of freedom of speech and expression set out in art 14(1). In other words, s 8(1) of the Supreme Court of Judicature Act ought to be subservient to art 14(1). I reject this submission. In my view, it is not open to the respondents to seek in aid art 162 to read down the offence of contempt of court provided in s 8(1). Article 162, which is the last article in the Constitution, is a saving provision which preserves, as provided therein, 'all existing laws' after the commencement of the Constitution. The Supreme Court of Judicature Act, however, was not an existing law at the time of the enactment of the Constitution. It was enacted in 1969, some six years after the Constitution, and art 162 can have no application to it whatsoever. The final word on this is that Mr Robertson did not argue that scandalizing the court had been abolished by the Constitution.

The decision

In applying the law to the facts in these proceedings, I was mindful of the following general considerations. First, that the article was published in a financial newspaper of international repute which enjoys a wide regional circulation in Asia.

Secondly, the author of the statements complained of was Mr Peter Kann, none other than the president of Dow Jones, a major media organization in the United States which owns a network of companies worldwide engaged in the business of delivering financial news and general news of interest to the business community and other readers in Asia, Europe and America. The president of Dow Jones is no doubt a very influential person in the news world. His comments on news matters would be taken note of, if not acted upon by decision-makers interested in this region. So, he is not, as was submitted by Mr Robertson, any ordinary litigant.

Thirdly, the press statement was a considered release. As I read it, it was a carefully crafted piece of journalism. It was not an extempore, impromptu outburst of a disappointed litigant. Moreover, it seems to me that it was issued immediately after the decision to serve some purpose, perhaps to negative or neutralize the impact of the court decision which was said by the first respondent to be a highly newsworthy event and of considerable interest to the readers of the AWSJ.

Fourthly, in reading the article, it is crucial that I place myself in the position of a reader of the article on the morning of 2 December 1989. The situation that morning was that there was saturation coverage in the

Singapore newspapers of the decision of Justice LP Thean. On the other hand, there was this article. The question for decision is what was the reaction of the reader of it, what opinion did he form of the decision of the High Court in Singapore after reading para 4 of the article.

On this paragraph, I do not accept the submission made for the respondents that the press statement would be read by the ordinary reader to be no more than a criticism by a litigant of the consequences of an adverse decision and such as an announcement of an intention to consider an appeal. This submission is not supported by the facts. The reader was not told that there was going to be an appeal against the decision. It could easily have been said: 'The *Review* has instructed their lawyers to appeal against the decision which was unwarranted on the facts.' Instead, what was said was: 'Counsel for the *Review* will study the judgment to determine what further legal action will be appropriate.' It seems to me this suggests something quite different from an appeal.

At this point, I would mention that in the course of his submission, Mr Robertson produced the grounds of appeal against the decision in the libel action that would be before the Court of Appeal to show that what was said in the article was not contempt of court. This argument, in my view, cannot be sustained because at the time of the publication of the article the reader knew nothing about these matters.

I shall now return to the article. I have no doubt whatsoever that any ordinary reader of the article, and by that I mean a business executive or other professional who read the AWSJ that morning, would find it to be contemptuous of the judge and of the High Court of Singapore. Clearly, the reader would conclude that the plaintiff won the libel action against the defendants because he was the Prime Minister and not on the merits of the case.

I agree with the submission of the A-G that the first statement by itself, 'A Singapore court has entered a libel judgment in favour of Singapore's Prime Minister based on an article the Prime Minister found personally offensive' contains the imputation that the judge had not been impartial. There is the strong suggestion that the judge was biased.

In the next sentence that 'The article at issue contained an essentially accurate portrayal of highly newsworthy events' the bias alleged here is that, notwithstanding that the *Review*'s article was 'essentially accurate', the judge had unjustifiably found against the *Review*. Here, too, the imputation is that the judge found the article in the *Review* to be libellous merely because the Prime Minister took umbrage to it.

The sentence that followed: 'Solely because it was read to be critical of Mr Lee, however, it has resulted in this unwarranted determination against the *Review*' is contemptuous because of the use of the words 'solely' and 'unwarranted' in the context of this sentence. Whilst I accept the submission that the word 'unwarranted' by itself is not an offensive remark, when it is used with the word 'solely' it becomes obvious that any ordinary reader would say that the judge had not decided the case on the facts that were before him but for considerations that were wholly wrong on his part in the exercise of his judicial function. The imputation of bias here is one of favouritism towards the Prime Minister, the plaintiff in the libel action.

The last sentence, 'We can only hope that in the long term, the *Review*'s punishment will not, as doubtlessly intended, still honest and independent voices in Singapore' clearly imputes improper motives to the judge in the exercise of his judicial function.

On this last sentence, an argument was mounted for the first three respondents that the comment therein was aimed more at the Prime Minister and his intentions in bringing the libel action than at the judge who was not mentioned at all in the press statement, and therefore, no contempt is committed because it is not contempt of court to refer to the plaintiff. I was also told that the Prime Minister had commenced an action against the first three respondents for libel in respect of the article and the writ of summons and the statement of claim were tendered in evidence. All I need say is that I am not concerned in these proceedings with that libel action, whether or not it contains matter libellous of the Prime Minister.

For the reasons I have already given, it is plain to me that the comment in the last sentence referred to the judge because it was he who entered judgment and awarded damages against the *Review*. And, there is a pernicious suggestion in this sentence that the judge was acting to facilitate the suppression of honest and independent views in Singapore. In other words, that he was in collusion with the Prime Minister to 'still honest and independent voices in Singapore.'

Finally, I think it is of considerable interest that I should refer to the facts in *Badry*'s case,[5] in so far as they are relevant to the present case, where an imputation of bias was held to be a contempt of court. Once the imputation therein is placed side by side with those made in the article in the AWSJ one sees how far worse the present case is compared to *Badry*'s case.[5] In *Badry*'s case,[5] the words complained of were these:

> 'A creole working at FUEL' (a well-known commercial concern in Mauritius) 'met with an accident at work. He is now 50 per cent incapacitated. The case went to the Supreme Court. The case was dismissed. Because it is FUEL.

> Because it is Mr Series who is there [an important person in the management of FUEL] he did not get a sou [a penny] in compensation. This is the kind of justice we have here.'

On these remarks, the Supreme Court reached the following conclusion:

> ... on the other hand, relating to the man who had been incapacitated at 50 per cent, we have no doubt that the respondent meant and could only have been understood to mean that this man's claim for damages or compensation had been unjustly dismissed by the Supreme Court because the other party to the case happened to be a wealthy company. It was, we find, nothing else but a serious accusation of bias being levelled at the Supreme Court and can in no way be possibly considered, as was suggested by counsel, as having been a comment on the difficulties poor litigants may encounter in having their cases presented in court.

The Privy Council in dismissing the appeal said:

> In spite of earnest endeavours by the appellant's counsel to pursue before their Lordships the line of alternative interpretation suggested in the last sentence, their Lordships find it impossible to accompany him in this journey. It seems impossible to attribute any meaning to the words spoken other than attribution to an actual case, real or fictitious, and the worse if fictitious, in which the justice of the case was overborne by bias and the overweening influence alleged to have been exerted by FUEL and their powerful official, Mr Series ...
>
> As it is, their Lordships can only confirm the conclusion of the Supreme Court when they said:
>
> 'The fact remains that we find that the grave and unwarranted accusation which (the appellant) chose to level at the Supreme Court on 18 May was clearly meant to shake public confidence in the administration of justice in Mauritius.'

It remains for me to deal with the contempt committed by each of the respondents.

The first respondent: the editor

As the editor responsible for the management of the news department and for all news items which appear in the AWSJ, the first respondent, Mr Wain, accepts responsibility for the article. At the time the article was put together, Mr Wain had in front of him the press statement from Dow Jones. I accept what Mr Wain has said on this, that it is an exercise of responsible journalism to seek to obtain a response from the main party on the losing side. He decided to have the verdict and the response to it recorded in the short story on p 3 of AWSJ. On the press statement, Mr Wain said in his affidavit:

> Mr Kann's press statement was a newsworthy item which the public interested in the court verdict would be equally interested in reading: it was not published as my view or as the view of the AWSJ, but as the clearly identified response of the president of the company which was the major party to the litigation. I was not ordered to publish it, nor did I have any role whatsoever in formulating it. I did not discuss it with Mr Kann and was not privy to his intention of issuing it. Once issued, however, it became a newsworthy item in itself and something which I believe to have been appropriately integrated into the main story about the verdict.

In my judgment, this stand that Mr Wain has taken is not an acceptable one in law. There was no compulsion on Mr Wain to publish the press statement. Since, as the editor of the AWSJ, he had a duty to vet the press statement to ensure that there was nothing in it that would make the publication of it a contempt of court, he could have omitted the offending portions of the statement. On my finding that the article contained allegations scandalizing the High Court, Mr Wain is liable for contempt of court.

The second respondent: the publisher

It is not in dispute that the second respondent, Mr Wilson, was at the material time the publisher of the AWSJ. It was submitted by Mr Robertson on his behalf that he is described as the publisher of the AWSJ solely for the purpose of complying with the laws relating to publishers of newspapers in Hong Kong. Further, relying on the statements made by Mr Wilson to Inspector Scully which are exhibited in Scully's affidavit, that Mr Wilson had no knowledge of the article, it was submitted that he was not liable. For the reasons I have already given, I reject this submission. Mr Wilson as the publisher cannot evade responsibility for any publication that is found to be in contempt. In this case, Mr Wilson is liable for contempt of court.

The third respondents: the proprietors/publishers

They are clearly vicariously liable in law for the publication of the offending article. It is right to say that Mr Robertson did not in any way seek to exonerate them, if I find the article to be contemptuous.

The fourth respondents: the printers

It is true that the fourth respondents, as the printers of the AWSJ, had no knowledge of the existence of the offending article, before or at the time of the printing of the particular issue of the AWSJ. However, as I have shown, neither lack of intention nor the defence of innocent dissemination is available to a printer if what is printed is in fact a contempt of court. It is also true that there has been tremendous progress made in the printing technology. But, as the law stands, these changes do not affect the liability of printers. I would, however, give effect to this when I consider penalty.

On the other hand submission of Mr Shanmugam relating to key national objectives, as I take the view that the law of contempt of court is settled law in Singapore, it is for Parliament in its wisdom to decide whether the law should be changed and innocent dissemination

should be available as a defence for printers of contemptuous materials.

The fifth respondents: the distributors

It is sufficient for me to say that the same considerations that apply to the printers equally apply to the fifth respondents, who were the distributors of the AWSJ.

For all these reasons, I hold all the respondents liable for contempt of court for having brought into existence by publishing, printing and distributing the article in the AWSJ.

Application allowed.

Solicitors: *Murphy & Dunbar; Drew & Napier; Palakrishnan & Partners.*

Reported by *S Surenthiraraj*

Attorney General v Wain & Ors (No 2)

HIGH COURT (SINGAPORE) — ORIGINATING MOTION NO 126 OF 1989
SINNATHURAY J
11 JANUARY 1991

Civil Procedure — Contempt of court — Penalty — Jurisdiction of court to punish for the same — Factors to be considered in punishing

The facts appear in the main report at p 525. This report is concerned only with the grounds on penalty.

Held, sentencing the respondents:

(1) The editor had failed in his duty to vet the statement before publishing the press statement. He is ordered to pay a penalty of $4,000 and the costs of the proceedings.

(2) The publisher was in charge of the business side of AWSJ, and he knew nothing of the statement. He is ordered to pay a penalty of $1,000 and the costs.

(3) The proprietor will pay a penalty of $4,000 and the costs of the proceedings.

(4) The printers and distributors had no control before the publication of the particular issue of AWSJ. They are ordered only to pay the costs of these proceedings.

Tan Boon Teik (Attorney General) in person (*Sowaran Singh* and *Yap Huan Lan* with him).
Dr Myint Soe (*Lalita Seenivasan* with him) for the first, second and third respondents.
K Shanmugam for the fourth respondent.
Palakrishnan (*Amarjit Singh* with him) for the fifth respondents.

Cur Adv Vult

Sinnathuray J: After having found the respondents liable for contempt of court for having brought into existence by publishing, printing and distributing the article in the AWSJ, I heard submissions on penalty. I then delivered the following grounds.

I can now deal quite briefly on the penalty to be imposed in these proceedings in respect of each of these respondents.

The one main fact I bear in mind with regard to penalty is the submission made by Mr Robertson for the first three respondents and it would equally apply to the fourth and fifth respondents that this court's jurisdiction to punish for contempt of court is strictly territorial and that the AWSJ was gazetted and permitted to circulate only 400 copies in Singapore. As regards these 400 copies that were circulated in Singapore, I have already, in my judgment, in dealing with the distributors, given an itemized account of how the 400 copies were in fact distributed.

Having said that, so far as liability is concerned, I have already expressed my views, and it is that the first and third respondents who are wholly responsible for it.

The first respondent, as the editor, had a duty to vet the press statement issued by the president of Dow Jones. He had in this regard failed in his duty. I have in front of me the news report published in the *Far Eastern Economic Review*. It is an abbreviated version of the press statement that had been made by Mr Peter Kann for Dow Jones. It appeared in the *Review* on 14 December 1989. The editor had very properly left out the objectionable parts of the press statement. In deciding the penalty on the first respondent one other consideration I must bear in mind, and I accept, of course, his apology if he is found liable as he has been. I order that he pays a penalty of $4,000 and the costs of these proceedings.

Next, the second respondent, Mr Wilson. He was the publisher and in charge of the business side of the *Asian Wall Street Journal*. I have considered the statement he gave to Inspector Scully. I accept his statement that he knew nothing about this press statement that was published in AWSJ. Bearing in mind again that my jurisdiction is territorial, I will in his case order that he pays a penalty of $1,000 and the costs.

As for Dow Jones, I have already said enough. They would pay a penalty of $4,000 and the costs of these proceedings.

As for the fourth and fifth respondents, I accept the facts as stated by the deponents in the affidavits. It is altogether clear that they had no control. They could not have exercised any control before the publication of the particular issue of the AWSJ. I think justice will be served in this case that they be ordered to pay only the costs of these proceedings.

I hereby certify the above grounds on penalty.

Order accordingly.

Solicitors: *Murphy & Dunbar; Drew & Napier; Palakrishnan & Partners.*

Reported by *S Surenthiraraj*